Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Annual Assessment of the Status of	)	MB Docket No. 04-227
Competition in the Market for the	)	
Delivery of Video Programming	)	

COMMENTS OF
<u>THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION</u>

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The National Cable & Telecommunications Association ("NCTA"), by its attorneys, submits the following comments in the above-captioned proceeding.

NCTA is the principal trade association of the cable television industry. Its members provide video programming, broadband Internet and other services throughout the United States. NCTA also represents programmers and suppliers of equipment to the cable television industry.

INTRODUCTION AND SUMMARY

Congress directs the Commission to "annually report … on the status of competition in the market for the delivery of video programming." Last year, the Commission moved from describing cable's position as "dominant" to "predominant." This year it is time – indeed time is past due – to fully acknowledge the reality that the market for the delivery of video programming is characterized "by vigorous rivalry among multiple MVPDs (multichannel video program distributors) offering closely substitutable services," in the words of the FCC's *Second Annual Report* in 1995.

When the "vigorous rivalry" was envisioned, cable's MVPD share was 91 percent.[1] Nine years later, cable's MVPD share has dropped to approximately 73 percent. The national share of DBS has grown to more than 23 percent. The uninterrupted trend of the last decade has been declining cable MVPD share and increasing MVPD shares among multiple competitors.

The Commission now has all the data needed to conclude that cable, DirecTV and EchoStar offer widely available and comparable services, and that they are engaged in a vigorous competitive rivalry. To the extent the Commission believes it needs franchise area data, the Media Bureau recently found that this information "is published by industry sources with sufficient accuracy."[2]

Bundling strategies evidence the intensity of the competitive rivalry in the video programming marketplace. Cable companies are offering video, broadband Internet access and, increasingly, telephone services. DBS companies and the RBOCs are combining forces to offer packages of video, broadband Internet access and telephone service. It is clear that cable companies are not just competing with EchoStar and DirecTV for video customers, as well as the recent DBS entrant, VOOM. They are also competing for broadband Internet access and, increasingly, telephone customers, with the DBS providers and the largest telcos. Moreover, DBS is getting into broadband. For example, WildBlue launched the Anik F2 Satellite, the largest commercial telecommunications satellite, on July 17, 2004.[3]

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1 *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 11 FCC Rcd 2060, 2063 (1995) ("*Second Annual Report*").

2 Comcast Cable Communications, Inc., Order, DA 04-1983, rel. Jun. 30, 2004, at ¶ 9.

3 Skyreport, July 19, 2004. (*See* www.skyreport.com/viewskyreport.cfm?ReleaseID=1440#Story3, Anik F2 Soars, WildBlue gets a Lift into Biz.) *See also* Davenport, WildBlue launches satellite, July 20, 2004.

Cable companies also face increasing competition from home video alternatives. The Commission found in the *Tenth Annual Report* that consumers are devoting a significant portion of their entertainment resources to home video. DVDs, in particular, compete for the consumer's viewing time with cable's video-on-demand service and all of the other content services that cable systems offer.[4] Notably, Disney's MovieBeam service uses analog broadcast spectrum to deliver premium movies to a 160 GB set-top box already pre-loaded with content and equipment with an antenna. Broadband Internet content is developing into a major consumer viewing option and competitive alternative to multichannel video programming services. Movielink, a joint venture of several major studios, and a venture of Starz! Encore and Real Networks are among the competitors offering these services.

The cable industry's competitive response to DirecTV and EchoStar has involved massive investments undertaken over the last eight years that have made possible the offering of a vast array of new services. Cable companies have invested over $85 billion in infrastructure upgrades and facilities improvements. As a result, cable-delivered broadband Internet access is available to more than 90 percent of television households and telephone companies have responded with their own broadband offerings. HDTV is available to cable subscribers in over 155 television markets. Digital cable has expanded viewing options. Interactive services are playing an increasingly important role. And more customers have a facilities-based choice of telephone providers.

The cable industry's commitment to improving its service offerings to consumers has never been limited to hardware. Cable companies have made substantial financial commitments to high quality and diverse national video networks, as well as to local and regional networks.

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4 *Tenth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*,

Despite its substantial number of subscribers, DBS has developed virtually no exclusive original programming outside of bidding on sports rights.

In sum, as these comments demonstrate, the vigorous rivalry envisioned in the early *1995 Video Competition Report* has been realized.

I. THE COMMISSION SHOULD CHARACTERIZE AS "VIGOROUS RIVALRY" THE STATE OF COMPETITION IN THE MARKET FOR THE DELIVERY OF VIDEO PROGRAMMING

In the *Tenth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming* ("*Tenth Annual Report*"), the Commission appropriately took a broader view than in previous reports, conducting an evaluation of video competition covering the period of the ten reports from their inception in 1994. The Commission's findings reflected the dramatic growth of competition in the video marketplace in the last decade. Summing up the growth of DBS and the cable industry's competitive response, the Commission found: "Cable television has, in fact, *greatly evolved* since the first report, providing more choice, greater flexibility, and more control. Ten years ago, cable television was an analog transmission, but as a result of the all-digital DBS technology and its widespread acceptance by the public, cable television operators began replacing much of their original coaxial cable infrastructure with hybrid fiber and coaxial cable ("HFC") networks."[5]

Cable's "greatly evolved" state is directly attributable to the "widespread acceptance by the public" of DBS. Through DirecTV and EchoStar, DBS gave consumers more choice, greater flexibility, and more control and spurred cable companies to offer vastly more channels of video programming, HDTV, high-speed Internet access, cable telephony, and video-on-demand.

FCC 04-5, rel. Jan. 28, 2004, ("*Tenth Annual Report*").

5 *Id*. at ¶ 12 (citation omitted)(emphasis supplied).

The *Tenth Annual Report* also re-characterized MVPD competition. In several prior reports, the Commission had determined that cable was the "dominant" multichannel video distribution technology. In last year's report, the Commission found that cable television is the "predominant technology for the delivery of video programming."[6]

By shifting its characterization of cable's role in the multichannel video marketplace from "dominant," to "predominant," the Commission acknowledged the changes in the multichannel video marketplace. But the pace of competition has quickened even in less than a year. The Commission should describe in more detail the nature and extent of that competition in the *Eleventh Annual Report*. The Commission should focus on a new way of looking at the multichannel video delivery marketplace no longer characterized by a single dominant provider.

NCTA suggests that the FCC should look to evaluate competition based on its hopes for multichannel video programming competition described in its *Second*, *Third* and *Fourth* video competition reports. At that time, the agency described a multichannel video marketplace that was "highly concentrated" and that "could permit the exercise of market power by incumbent cable systems."[7] But those reports anticipated that competitive conditions could change. In articulating a vision that was very different, and very desirable, for consumers, the Commission described that environment as one characterized by "vigorous rivalry among multiple MVPDs offering closely substitutable services."[8]

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6 *Id.*, ¶ 4.

7 *Third Annual Report*, 12 FCC Rcd at 4362 (1997).

8 *Id*.

This description applies to today's MVPD marketplace. Consumers are able to switch among comparable sources of video programming. And it will remain so "over the long term."[9] Accordingly, the Commission should recognize that the MVPD marketplace is best described as a "long term … vigorous rivalry," a condition anticipated by the 1995 Report.

II. THE MARKET FOR THE DELIVERY OF VIDEO PROGRAMMING IS HIGHLY COMPETITIVE

A. Cable Companies, DirecTV and EchoStar Offer Closely Substitutable Services and Compete Aggressively to Attract Each Others' Customers

The *Tenth Annual Report* recognized the continuing expansion of cable's two principal nationwide competitors, DBS companies DirecTV and EchoStar.[10] The Commission found that the two leading DBS providers continue to gain significant numbers of subscribers. Moreover, a substantial number of the subscribers who selected DBS service over this period have shifted their multichannel service from a cable company to one of the leading DBS companies. The Commission found: "As a relatively new service, DBS continues to attract consumers who never subscribed to MVPD services, as well as consumers switching from cable service. DirecTV states that according to its internal subscriber data, approximately 70% of its customers were cable customers at the time that they first switched to DirecTV."[11]

The Commission's findings, as true today as in December 2003 – competitive pricing, wide programming selection, higher levels of customer service, expansion of local-into-local service, and the introduction of new products – are descriptive of "vigorous rivalry" in the delivery of video programming.

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9 *Fourth Annual Report*, 13 FCC Rcd at 1038. We note that the Commission found in the *Tenth Annual Report* that "Today, most consumers have the additional choice of at least two national DBS providers." *Tenth Annual Report* at ¶ 5.

10 *Tenth Annual Report*, ¶¶ 65-67.

The trend of recent years has been one of substantially greater video subscriber growth for DBS companies than for their cable competitors. The combined number of DirecTV/EchoStar subscribers increased from 20.36 million to 22.8 million between June 2003 and April 2004, an increase of 12 percent in only nine months. (DirecTV is now the second largest MVPD. EchoStar has more subscribers than all but two cable MSOs.) During the same period, the cable MVPD subscribers increased from 70.5 million to 71.1 million, a smaller gain of only 1 percent over the same period.

Exhibit 1
Analysis of MVPDs (Multichannel Video Program Distributors)
April 2004

	Customers (In Millions)	Percent of MVPD Market
Cable	71.10	73.30%
DBS	22.80	23.51%
Others[12]	3.10	3.19%
Total MVPD	97.00	100.00%

Source: NCTA estimates based on data from Kagan Research LLC, *Kagan Media Money*, May 26, 2004, p. 6; Nielsen Media Research.

This chart demonstrates continuation of the trend that began in the mid-1990's when DBS was first offered.

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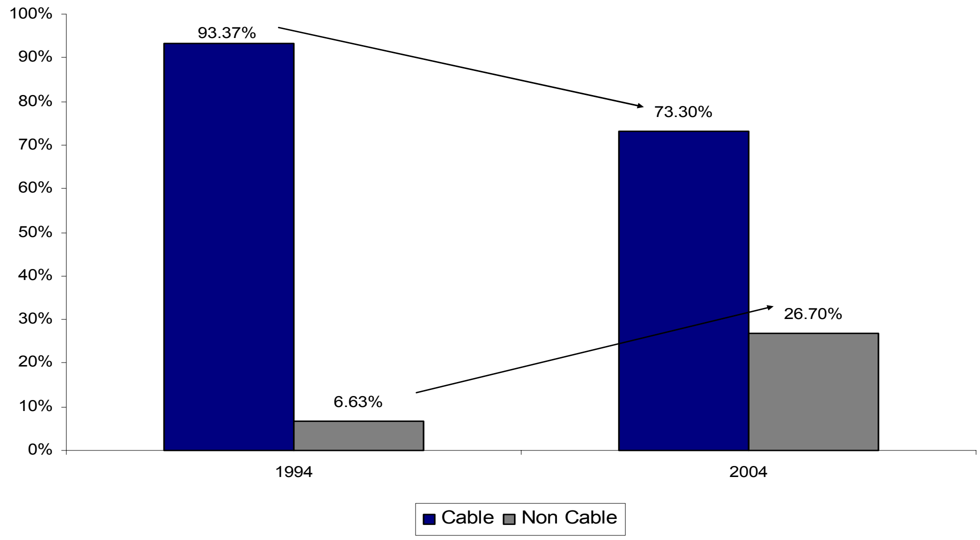
11 *Id.,* ¶ 65.

12 C-Band Satellite: 0.40 Customers, 0.41% of market; Multichannel Microwave Distribution System: 0.20 Customers, 0.21%; Satellite Master Antenna Television: 1.10 Customers, 1.13%; Alternative Broadband Providers: 1.40 Customers, 1.44%. We note also the emergence of a new multichannel alternative, USDTV. "With USDTV, your local broadcasters can beam the best channels and events 'over the air' right to your home, plus eye-popping high-definition television." *See* www.USDTV.com.

Exhibit 2
Changes in MVPD Subscribers: 1994 v. 2004



Source: 1994 –5th Annual Report on Competition FCC 98-335 at C-1, 2004 - NCTA estimates based on data from Kagan Research LLC, *Kagan Media Money*, May 26, 2004, p. 6; Nielsen Media Research.

Only a year ago, in July 2003, the Commission acknowledged the remarkable success of the DBS companies in comparison to other consumer offerings. In an evaluation separate from the annual reports on the status of video competition, the agency observed: "The public has adopted DBS service at one of the fastest rates of any consumer good in history…. In fact, between June 2001 and June 2002, growth in the number of cable subscriptions had leveled off to less than one-half of one percent (0.4%), while DBS's growth rate was 14% for the same period."[13]

With the evidence undeniable that the marketplace dynamic had been transformed by DBS competition and switching by consumers among multiple alternatives, the Commission found last year that "the competitive presence of DBS has forced cable television services to

[13] 2002 Biennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, FCC 03-127, rel. Jul. 2, 2003, at ¶ 113.

expand channel capacity and service options."[14] The cable industry's $85 billion commitment to plant upgrades that made additional video programming services and advanced services possible was a "result" of the introduction and widespread consumer acceptance of DBS.[15]

The existence of the rivalry among cable, DirecTV and EchoStar is supported by the independent analysis of Leichtman Research Group ("LRG") issued earlier this year. According to LRG, "Competition between cable and DBS is more intense than ever."[16] LRG further reported that despite differences in overall customer satisfaction, "there is virtually no difference in the potential for customers to switch from each service. Overall, 11% of cable subscribers report that they are likely to switch from their current provider in the next six months, while 10% of DBS subscribers report that they are likely to switch."[17]

In a "Research Note" issued following the release of the *Tenth Annual Report*, LRG evaluated and commented upon the Commission's analysis, and concluded: "[T]he major force in changing the environment from a decade ago is DBS. Competition from DBS has made the cable industry better, and has spurred the advances that have occurred in the past decade – with consumers reaping the benefits…. [I]t is extremely unlikely that the major conclusion of the report – that the market for multichannel video service continues to improve – will change next year."[18]

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[14] *Id.*, ¶ 114.

[15] *Id.*, ¶ 115.

[16] "DBS Continues to Lead Cable in Customer Satisfaction: But Cable and DBS Subscribers Express a Similar Likelihood to Switch," Leichtman Research Group Press Release, Jan. 29, 2004, at 1. The conclusions are based upon a telephone survey of 1,600 randomly selected households throughout the United States, and are reported in the study, Broadband, Cable and DBS: Competing for Customers.

[17] *Id.*

[18] "DBS Continues to Lead Cable in Customer Satisfaction – but Likelihood to Switch is Similar," Leichtman Research Group Research Notes, 1Q 2004, at 4.

The competitive rivalry among cable, DirecTV and EchoStar in local geographic areas is apparent from a recent article which portrayed a map with data provided by the Television Bureau of Advertising which showed many significant satellite shares in urban and non-urban areas. According to the article, the satellite dish share was 38 percent in Dallas-Fort Worth, 28 percent in Denver, 27 percent in Los Angeles and 26 percent in Atlanta. It was also reported that the satellite dish share was 47 percent in Springfield, Missouri, 44 percent in Missoula, Montana and 41 percent in Paducah, Kentucky.[19] And competition is intensifying with the availability of a third DBS provider, VOOM.[20]

The growth in direct-to-home ("DTH") penetration on a state-by-state basis confirms the national trend and demonstrates on a more granular basis the status of competition in the market for the delivery of video programming.[21] Direct-to-home penetration of television households, as of April 2004, exceeded 30 percent in 5 states, 20 percent in 31 states, and 15 percent in 41 states.

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19 "Cutting the Cord: Fed Up With the Cable Guy? Satellite Has Come Out of Nowhere to Challenge Cable TV's Dominance in the American Living Room. Should You Go For the Dish – Or the Wire?," Smart Money, Jul. 1, 2004, at 67-71.

20 "Cablevision's Rainbow DBS Introduces 'VOOM[sm]' Nation's First Television Service Designed to Meet Demand of Growing, Underserved HDTV Market," Cablevision News Release, Oct. 15, 2003.

21 Direct-to-home data includes DBS and C-Band customers. Since C-Band has 400,000 subscribers nationwide, compared to DBS's nearly 23 million subscribers, nearly all of DTH subscribers are DBS customers.

Exhibit 3
States with Direct-To-Home (DTH) Dish Penetration of Fifteen Percent or More
April 2004

State	Penetration Rate	State	Penetration Rate
Vermont	37.30%	South Carolina	22.60%
Montana	34.43%	Arizona	22.35%
Utah	32.98%	Minnesota	22.06%
Idaho	32.48%	North Dakota	21.96%
Wyoming	32.09%	California	21.92%
Mississippi	29.52%	Oregon	21.92%
Missouri	29.14%	Wisconsin	21.40%
Arkansas	28.34%	South Dakota	21.28%
Georgia	26.70%	Maine	20.87%
New Mexico	26.04%	Nebraska	20.23%
Colorado	25.79%	Washington	19.75%
Oklahoma	25.46%	Kansas	19.57%
Alabama	24.15%	Michigan	19.23%
Kentucky	23.88%	Illinois	19.13%
Indiana	23.84%	Florida	18.79%
West Virginia	23.60%	Alaska	18.21%
North Carolina	23.56%	Louisiana	16.35%
Iowa	23.42%	Ohio	16.20%
Tennessee	23.31%	Nevada	16.02%
Texas	23.18%	Maryland	15.01%
Virginia	22.85%		

Source: SkyTRENDS SkyMAP, April 2004; www.skyreport.com; TV Household data from A.C. Nielsen.

Exhibit 3, DTH penetration, *understates* DTH in relation to cable on a state-by-state basis. The focus of this proceeding is, after all, the status of competition between cable and its leading multichannel competitors. Exhibit 4 provides state-by-state shares of cable and its DTH competitors. It shows that the DTH share relative to the cable share is significantly greater than the DTH share relative to television households, once the non-MVPD households are excluded.

Exhibit 4
Distribution of Cable and Direct-To-Home (DTH) Combined Subscribership

State	DTH Share	Cable Share	State	DTH Share	Cable Share
Idaho	41%	59%	South Carolina	26%	74%
Utah	41%	59%	Illinois	26%	74%
Vermont	40%	60%	North Dakota	25%	75%
Missouri	39%	61%	Nevada	25%	75%
Montana	38%	62%	Maine	24%	76%
Mississippi	38%	62%	Washington	24%	76%
Kentucky	38%	62%	West Virginia	24%	76%
Arizona	34%	66%	Michigan	24%	76%
Colorado	33%	67%	Alaska	22%	78%
Arkansas	33%	67%	Florida	22%	78%
Georgia	32%	68%	Nebraska	22%	78%
New Mexico	31%	69%	Maryland	21%	79%
Texas	31%	69%	Ohio	20%	80%
North Carolina	31%	69%	Kansas	20%	80%
Oklahoma	31%	69%	Louisiana	19%	81%
Minnesota	30%	70%	New York	17%	83%
Wyoming	30%	70%	District of Columbia	17%	83%
Tennessee	29%	71%	New Hampshire	16%	84%
Wisconsin	29%	71%	Delaware	15%	85%
Iowa	28%	72%	New Jersey	15%	85%
Alabama	28%	72%	Pennsylvania	14%	86%
South Dakota	28%	72%	Rhode Island	11%	89%
Oregon	28%	72%	Massachusetts	11%	89%
Virginia	27%	73%	Connecticut	11%	89%
California	27%	73%	Hawaii	4%	96%
Indiana	26%	74%			

Source: SkyTRENDS SkyMAP, April 2004; www.skyreport.com.

Viewed this way, DTH's share relative to the cable share is at least 30 percent in 17 states, at least 25 percent in 30 states, at least 20 percent in 40 states, and at least 15 percent in 45 states. Substantial DBS shares relative to cable are not limited to the less populous states. For example, the DBS share relative to cable is 31 percent in Texas, 27 percent in California and 26 percent in Illinois.

B. Advertising Represents a Significant Indicator of Competition

The vigorous rivalry among multichannel video providers is also apparent from the ever-present spate of advertisements that consumers receive through a wide range of media. If multichannel video competition were not so intense, the ad wars among the service providers would not be so intense.

In fact, the rivalry among the multichannel competitors has become sufficiently passionate that it has caused newspapers across the country to take notice. It was reported earlier this year that even though EchoStar had raised rates itself, as part of its "stop feeding the cable pig" campaigns, the company "inflated a giant pig balloon in front of the Colorado Springs offices of Adelphia Communications Corp. and chided the company for its rate increases."[22] A story relating to the consumer reaction to cable and DBS ad campaigns reported, "you've probably noticed there's a war going on."[23] According to a story that ran late last year in another publication, "The mudslinging between cable and satellite TV companies has become messier of late."[24]

Other stories further detail the vigorous and ongoing rivalry. *The Los Angeles Times* reported: "Recently, satellite and cable TV companies have rolled out high-profile ad campaigns to attract customers, enlisting celebrities and ordinary folk to sell their services, from Danny DeVito and Laurence Fishburne reading DirecTV fan mail to the poor schlub in the Comcast ads

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22 "EchoStar Ups Rates on Some TV Plans; Company Ads Still Scold Cable's Hikes," Denver Post, Jan. 29, 2004, at C1.

23 "Cable Still Dominates, Despite Ad War," The Register-Guard, Jul. 4, 2004. According to one Comcast customer quoted in this article: "I've made a decision that (my cable service) is worth every penny…. I see that (ad) and I think they're implying that I must be stupid to be paying so much ….It's kind of a personal insult, as if I wasn't aware of the options." *Id.*

24 "Down and Dirty," Star-Telegram.com, Nov. 26, 2003.

forced to secure a wind-buffeted dish in a bucket of cement."[25] In Baton Rouge, Louisiana, "in a preemptive strike, Cox Communications has been airing television commercials that portray satellite broadcasting as an inferior service."[26] *USA Today* described ad campaigns by Adelphia, Charter, and Time Warner Cable in response to DBS company advertising.[27]

In addition to individual advertising initiatives, the cable industry, through "Only Cable Can" (developed by the Cable & Telecommunications Association for Marketing), promotes the advantages of all of cable's services against its competition. By accessing www.onlycablecan.com, or by calling 1-877-only-cable, consumers can obtain the latest information on digital cable, HDTV, On Demand service, DVR capability, high speed Internet access, home networking and digital phone service. It evidences an industry in a pitched competitive battle to retain customers and win back lost accounts.

Anecdotal evidence of aggressive competition in individual locations, while not conclusive, illustrates the new competitive reality. Local stories of the efforts of multichannel providers facing effective competition are illustrated by the following examples:

- Dallas: According to a recent analysis, the "[Dallas] Metroplex remains a difficult region for cable television operators to penetrate but is fertile ground for satellite companies, according to a new study."[28] An estimated 47.6 percent of Dallas-Fort Worth households have cable, compared to 66.7 percent nationally. By comparison, 30.3 percent of Dallas-Fort Worth households have satellite. "I expect to see more erosion of the cable numbers," said Alan Albarran, professor and chairman of the University of North Texas Department of Radio, TV and Film."[29]

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25 "Electrons: A Guy's Guide for Surviving That New Dish," The Los Angeles Times, May 27, 2004, at F1.

26 "Air v. Earth," The Greater Baton Rouge Business Report, Feb. 17, 2004.

27 "Cable Firms Court DISH Subscribers; As Viacom, EchoStar Battle," USA Today, Mar. 11, 2003.

28 "Dueling for Viewers: Area's Growth Proves Difficult for Cable TV to Keep Up With, Making DFW a Fertile Ground for Satellite," Fort Worth Star Telegram, DFW.com, Jun. 16, 2004.

29 *Id*.

- Fairfax: Cox, as part of a strategy to win back customers who have switched to satellite alternatives, instituted a "win back" campaign in Fairfax County, Virginia. "Our primary focus is on getting customers back," Clara Long, vice president of sales and marketing for Northern Virginia said. "We're focusing on what we bring to the table and what they [satellite providers] bring."[30] A sense of the intensity of the cable-satellite rivalry can be gained from a comparison of marketing campaigns. "EchoStar launched a "Cable Pig" attack in Fairfax and 40 other markets where cable rates have increased to convince subscribers they are paying too much…. Cox, meanwhile, is running its own marketing campaign and newspaper ads that say, 'It's Time to Dump Your Dish!' – a campaign focused on Fairfax. The company is offering to cart off satellite dishes if customers switch to cable, calling the deal a 'chance to come back to the best home entertainment.'"[31]

- California: Cable companies in several California locations "are offering hundreds of dollars to anybody willing to dump their dish…. The cable campaign comes as the two sides are spending millions of dollars on negative advertising campaigns that ridicule each other. The stakes are higher than ever for cable, which lost basic cable customers last year for the first time since 1980."[32]

In sum, advertising strategies of multichannel video providers constitute irrefutable evidence that consumers have choices among companies offering closely substitutable services.

C. Competing Bundled Packages of Video, Voice and Broadband Internet Access Services, Provide Further Evidence of the Presence of Vigorous Rivalry

When the Commission commenced issuance of annual *Video Competition* reports in 1994, cable television and local telephone service were viewed as discrete service offerings. Broadband Internet access did not exist.

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30 "Cox Seeking Better Image After Upgrade," The Washington Post, May 31, 2004, at E01.

31 *Id.*

32 "Ditching the Dish: Cable Companies Pay Bounties From $200 to $400 to Customers Who Turn in Their Satellite-TV Systems and Switch," The Orange County Register, Feb. 11, 2004, at 1.

Today, cable companies offer more than just analog video programming services; they offer digital video programming, broadband Internet access, and, increasingly, telephone service. It is no longer appropriate to view the cable industry as merely a distributor of video programming. The Commission has acknowledged these changed circumstances in recent years by seeking information on the advanced services offerings of MVPDs, including the availability of such services and the number of subscribers to such services.[33]

In the *Tenth Annual Report*, the Commission described the evolution of bundling strategies by cable companies and their competitors. The agency noted it first reported in the "*1997 Report* that cable operators were beginning to offer a bundle of services to include high-speed access to the Internet via cable modem. By year-end 1998, there were approximately 500,000 subscribers."[34] Less than six years later, cable companies offer broadband Internet access to more than 90 percent of the homes to which they offer video service, and there are more than 17 million cable modem subscribers. Cable's competitors have responded aggressively by offering their own competitive service bundles.[35]

Cable, DBS companies and telcos are offering their own versions of "the bundle." Even within particular distribution media, a variety of bundling strategies are being tested and implemented.

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[33] *Notice*, ¶ 26.

[34] *Tenth Annual Report*, ¶ 14.

[35] *See e.g.,* "Cable or Satellite? Please Stay Tuned, One-Upmanship Yields an Array of New Services As Even Phone Companies Enter the TV Picture," The New York Times, Jul. 31, 2003.

1. Cable's Bundling Strategies

Cable companies have expanded upon their strategy of bundling video and cable modem service by adding telephone service to their bundle, and offering these services as a package. These packaged offerings provide obvious benefits to consumers.

Cox Cable has been an early and aggressive player in the offering of a bundle of services to consumers. According to Cox Communications President and CEO Jim Robbins, "A driving factor in … [the company's] success continues to be our bundling strategy…. Today nearly one-third of our customers buy multiple services."[36]

Cablevision Systems Corporation recently began "to sharply discount … [video, voice and cable modem service] … as a package for less than $90 a month combined. The promotion intensifies the cable companies' competitive efforts on two fronts – against satellite TV providers and against phone companies such as Verizon Communications that offer high-speed Internet as well as phone service."[37]

Like telephone and DBS companies serving the St. Louis area, Charter Communications is "adding telephone service to their subscription TV and high-speed data services. In parts of St. Charles County, it offers a bundle of digital cable, cable modem and telephone service for $109 a month, and it's working to get the cost below $100, said Keesha Irving, marketing director for the St. Louis area.[38] "The battle of the bundles is heating up in St. Louis and across

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[36] "RBOCs and Cable Wage Turf War," Network World, Aug. 18, 2003, at 1. *See also,* "Ringing in VoIP, Ringing Up $$," CableFAX, Apr. 22, 2004; "A Tough Market: Competition Hot in Omaha Phone War – Cox-Qwest Matchup Market Share; Omaha World Herald, Sept. 17, 2003, at 1d.; "Cox Plays Defense and Offense," Broadcasting & Cable, Feb. 2, 2004, at 38.

[37] "Cablevision Discounts: Saving Its Customers a Bundle," Newsday, Jun. 22, 2004, at A42; *see also,* "Cablevision to Offer Internet Phone-Call Bundle," The Wall Street Journal, Jun. 21, 2004, at B5; "Cable on the Line: Deal Including Phone Could Trigger Rate War," The Record (Hackensack, NJ), Jun. 22, 2004, at L7; "Cablevision's Bundling Could Spook Investor's," Television Week, Jun. 28, 2004.

[38] "Telecoms Vie to Deliver Bundles of Joy," St. Louis Post-Dispatch, Mar. 7, 2004, at E1.

the nation as companies tout the benefits of one-stop shopping for communications and entertainment services."[39]

Time Warner Cable's provision of multiple services is illustrated by its offerings in Rochester, New York. In addition to providing digital cable and high-speed online service, digital phone service and other services are available.[40] Besides offering cable video, cable modem service and cable telephony in increasing numbers of areas, Don Logan, chairman of Time Warner's media and communications group recently indicated that the company "is considering offering wireless phone services with the help of one or two partners in the wireless sector."[41] Mr. Logan stated: "We think that wireless is another element of the bundle that we need to incorporate."[42]

2. DirecTV and EchoStar Bundling Strategies

DBS companies are offering their own bundles of services in competition with cable companies. These offerings are generally made as part of ventures with telcos.

According to a recent report, "Hoping to remove a marketing advantage now owned by cable television providers, direct broadcast satellite television companies are beginning to bundle their traditional services with Internet access…. Dish Network … began offering programming packages that include several combinations of high-speed Internet access, local and long distance telephone service from SBC Communications and wireless telephone service from Cingular Wireless. SBC's customer service department will handle requests for the combined services."[43]

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39 *Id.*

40 Time Warner Cable Rochester, N.Y., www.twrochester.com/products.

41 "TWC Mulls Phone Service," The Hollywood Reporter, Jun. 24, 2004.

42 *Id.*

43 "Satellite Providers Trying Internet Bundles," The Plain Dealer, Apr. 8, 2004, at E5.

DBS providers have focused some marketing resources for bundled services in less populated areas. A press story late last year found "DirecTV and Dish Network, the two biggest U.S. satellite television broadcasters, are gaining more subscribers as customers abandon cable in regions where they can't get high-speed Web access and new video services."[44]

The DBS-RBOC bundling strategy reached a critical point in March 2004 when Verizon became "the last regional Baby Bell phone company to pair up with DirecTV or Dish Network, the two big satellite TV carriers."[45]

Whether independently, or in concert with telephone companies, EchoStar and DirecTV are engaged in bundling strategies in competition with cable companies.

3. Telephone Bundling Strategies

Bundling plans have been announced by the major local phone companies as well. According to The Wall Street Journal, "[t]ired of looking on helplessly as cable rivals poach customers with discount packages of television, high-speed Internet access and voice service, the nation's big regional phone companies are beginning to fight back. The four Bells, convinced that TV is critical to their competition with cable, all have signed marketing agreements with satellite-TV companies. They now offer satellite programming as part of packages that include everything their cable competitors can offer – plus cell phone service, which cable companies don't provide."[46]

In addition to its DBS joint venture, Verizon Communications, which already provides telephone, wireless, and DSL services in the Greater Washington, D.C. area, "plans to start

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[44] "Satellite TV Lures Cable Clients: DirecTV, Dish Gain Customers Looking for Fast Web Access," Rocky Mountain News, Nov. 28, 2003, at 7B.

[45] "Call It the Phone Empire Strikes Back," St. Petersburg Times, Mar. 30, 2004, at 1D.

[46] "Bells Join Race to Offer TV," The Wall Street Journal, Apr. 29, 2004, at B1.

selling cable television service in the region later this year." The report further notes: "The fight for cable TV subscribers adds another layer to the competitive landscape in the local communications market. Cable companies and big and small telephone companies are slugging it out for telephone talkers and Web surfers. TV viewers are just the latest segment to be targeted."[47]

Responding to competition from cable companies, SBC recently "outlined plans … to deliver video services over an upgraded phone network. The regional Bell phone carrier already resells pay-TV services from satellite provider EchoStar. But SBC wants its own video products to compete with cable TV companies, which are quickly ramping up their own phone services."[48]

A BellSouth executive also expressed that company's commitment to offer video services in competition with cable companies. Jan Funderberg, BellSouth's president of consumer services, expressed the "belief … that we would hurt BellSouth if we [don't] go into video…. If we don't offer it, and somebody else does, that would increase customers' propensity to switch."[49]

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[47] "Phone Cos. Tune Into Cable TV Audiences," Washington Business Journal, Jun. 4, 2004, at 6. *See also* "Verizon: Take That, Cable: It seeks to reclaim lost ground with a gutsy plunge into pay-TV services," Business Week, May 24, 2004, at 81; "Verizon Venture's Into Cable's Turf With Plans to Sell Video Services: Phone giant will use fiber optics to transmit faster," USA Today, May 20, 2004, at 2B; "Ivan Seidenberg, CEO of Verizon, Vows to Overpower the Cable Guys By Plowing Billions Into a 90's Style Broadband Buildout. But Will He Really? Or is the Most Powerful Man in Telecom Pulling a Megabluff?," Fortune, May 31, 2004, at 120-123; "Verizon May Test TV in Tampa," St. Petersburg Times, Jun. 2, 2004, at 1D.

[48] "SBC Will Square Off Against Cable Rivals in Video, TV Services," Investor's Business Daily, Jun. 23, 2004, at A4. *See also* "SBC is Answering the Call of Cable TV," San Antonio Express-News, Jun. 26, 2004, at 1D; "SBC Plans Fiber Network Upgrade to Combat Cable TV Competition," TR Daily, Jun. 23, 2004.

[49] "Bells Fight Cable with Satellite-TV Deals," The Wall Street Journal, Feb. 9, 2004, at B1.

D. Cable's Video-on-Demand Service Competes with DVD and Other On-Demand Offerings

Consumers continue to enjoy an increasing array of home video choices delivered through DVDs, video cassettes and laser discs. As the Commission found in the *Tenth Annual Report*, consumers are increasingly allocating more of their entertainment dollars to home video.[50] Home video sales significantly exceeded movie ticket sales, as households spent $22.5 billion renting and buying DVDs and video cassettes versus $9.2 billion at movie theaters.[51]

The growth in sales of DVD formatted programming has been facilitated by gains in the sale of DVD hardware. U.S. consumers purchased 34 million DVD players in 2003, a 34 percent increase over the previous year, and household penetration is expected to reach 65 percent by year-end 2004.[52] The projected 2004 average factory cost of a DVD player is $120, a drop of 13 percent from the previous year.[53] More than 30,000 titles are now available in DVD format for rental or sale, with nearly 30 titles breaking sales of over five million copies in 2003 alone.[54]

These developments have, in turn, greatly benefited the programming community. "The costs of making and marketing summer blockbusters has become so astronomical that without the revenue generated from both the rental and sales of DVD, no major Hollywood studio would have been able to make movies and money the way that they have over the past five years."[55]

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50 *Tenth Annual Report*, ¶ 108.

51 "DVD Drives Video Industry to Record-Breaking Year," The Digital Entertainment Group, Jan. 8, 2004.

52 *Id.*

53 "January 2004 U.S. Consumer Electronics Sales & Forecasts," Consumer Electronics Association.

54 The Digital Entertainment Group, "DVD Drives Video Industry to Record-Breaking Year" (press release), Jan. 8, 2004

55 "DVD 2003 Wrap-Up," The Hollywood Reporter.com, Jan. 6, 2004, Columbia TriStar Home Entertainment president Benjamin Feingold.

Consumers spent $11.5 billion in 2003 on DVD sales, an increase of 33 percent over 2002. Revenues from DVD rentals increased 55 percent over 2002, as consumers spent more than $4.5 billion.[56] Consumers' overwhelming acceptance of the DVD format has led to new content delivery formats that compete with MVPDs, both cable and DBS. Netflix and Wal-Mart, as noted in the *Tenth Annual Report*, continue to compete head-to-head, as several other DVD mail-delivery upstarts struggle to breakout: DVDBarn in Scottsdale, Arizona; QwickFliks in Rancho Santa, California; and DVDOvernight.com in Philadelphia, Pennsylvania. Netflix remains the market leader, with nearly two million subscribers.[57] For $19.95 per month, subscribers can rent an unlimited number of movies per month, with three movies out at one time. At the end of first quarter 2004, Netflix grew its subscriber base 84 percent year-over-year, and has a nationwide household penetration rate of nearly two percent.[58] Wal-Mart also offers a competitive on-line alternative. It prices its unlimited service at $15.54 a month, with similar features to Netflix, including no due dates or late fees.

Netflix still pales in comparison to Blockbuster's market share of the video rental business. With its substantial retail presence, large movie inventory, and dominant membership base, the chain is poised to offer a subscription service that combines in-store and on-line rentals options. Its current MoviePass plan charges subscribers $24.99 a month to rent an unlimited number of movies, keeping two titles at a time or $29.99 per month for a three-movie-at-a-time option.[59] The company is expected to offer a mail-delivery option later this year.

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[56] "DVD Drives Video Industry to Record Breaking Year," Digital Entertainment Group, Jan. 8, 2004.

[57] Netflix, "Netflix Announces First Quarter 2004 Subscribers of 1,932,000," (press release), Apr. 1, 2004

[58] *Id*.

[59] The Associated Press, "Blockbuster Offers Monthly Subscriptions," David Koenig, May 26, 2004

Besides mail-delivery and walk-in store rentals, DVD customers have other viewing options: Flexplay Technologies, in association with Walt Disney, is marketing disposable DVDs. When vacuum-packed EZ-discs are exposed to air, an oxidation process renders the disc unreadable by DVD players after 48 hours. Flexplay continues to market EZ-discs at convenience stores, gas stations, and airports in select U.S. cities.[60]

As noted, the Commission has previously recognized that "Cable video-on-demand (VOD) … has emerged as a competitive service to home video."[61] Cable companies continue to push video-on-demand as a competitive alternative to personal video recording capability. Cablevision Systems, Charter Communications, Comcast Corporation, Cox Communications, Insight Communications, Mediacom, and Time Warner Cable are among the companies that have deployed VOD services. VOD provider iN DEMAND reported in December 2003 that *Movies On Demand* orders exceeded pay-per-view orders for the first time.[62] Some cable companies also are seeking unique program content to differentiate their VOD service. Comcast and Discovery Communications, for example, recently entered into a multi-year agreement to offer selected Discovery programming available as part of Comcast's On Demand Service.[63]

The Yankee Group anticipates that cable MSOs will continue to deploy VOD extensively over the next five years, making it available to 36.5 million digital cable homes by the end of 2008. The Yankee Group further states that about one in every three U.S. homes will have

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60 DVD-Recordable.org, "Disposable DVD's Fail to Catch On," Feb. 2, 2004

61 *Tenth Annual Report*, ¶108.

62 "Movies on Demand Orders Exceed Pay Per View Orders for the first time in December 2003," iN DEMAND press release, May 3, 2004.

63 "Comcast enhances on Demand and HDRV Line-Ups with Discovery's Real World Programming," Comcast Press Release, Jun. 21, 2004.

video-on-demand by the end of 2008.[64] Kagan Research, LLC, estimated that by the end of 2004, 23.3 million U.S. homes will have access to VOD from their local cable operator.[65]

The competitive effectiveness of cable VOD services relative to home video will depend significantly on the cable industry's ability to gain earlier access to premium content. Without changes, cable companies will remain at a significant competitive disadvantage compared to providers of home video.[66]

Other competitive entrants to cable VOD have either launched or are in planning stages. Walt Disney's MovieBeam service uses analog broadcast spectrum to deliver premium movies to a 160 GB set-top box already preloaded with 100 movies and equipped with an antenna. Subscribers pay $6.99 for a monthly subscription and between $2.49 and $3.99 for individual movies, with a 24-hour viewing window. Ten titles are updated weekly. Launched in 2003, the service has been rolled out in Jacksonville, Florida; Salt Lake City, Utah; and Spokane, Washington. MovieBeam's success will largely depend on its ability to license content from other studios as well as consumers' acceptance of another set-top box in the home.[67]

And TiVo is developing an Internet-based service that would allow subscribers to download movies and other programming to their PC. Once transferred to their digital video recorder hard drive, users could playback the content on television.[68]

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[64] "One in Every Three U.S. Homes Will Have Video-on-Demand by the end of 2008," Yankee Group Press Release, Apr. 9, 2004.

[65] Kagan Research, LLC, *Broadband Financial Databook 2003*.

[66] "Revenues on the Rise as Movie Windows Shrink," Multichannel News, Mar. 8, 2004. Hollywood studios' lucrative relationship with video retailers has kept the length of theatrical release windows mostly constant. Studios tend to delay release of movie content to video-on-demand (VOD) until 30-45 days after it's available on home video.

[67] Broadcasting & Cable, "VOD Takes to the Airwaves," Ken Kerschbaumer, Oct. 6, 2003.

[68] Broadcasting & Cable, "Point, Click, Screen: Will TiVo's Ability to Download Net Content Change TV?" Allison Romano, Jun. 14, 2004.

It is clear that even as cable VOD develops further, it will face aggressive competition from existing and new players.

E. Broadband Internet Content is Gaining Momentum in the Video Marketplace

As broadband penetration increases, home networking proliferates, and computers blend into home entertainment centers, Internet-delivered movies will become increasingly common. Netflix already plans to deliver movies via the Internet in 2005. Netflix's "strategy is to get huge in DVDs and then expand into downloads."[69]

The number of broadband connections is rising. At the end of 2003, the Commission reported that there were more than 28.2 million broadband lines in service; 16.4 million cable connections, 9.5 million DSL lines, and 2.3 million lines utilizing other types of connectivity.[70] On-line services like Movielink, CinemaNow, and Starz! Ticket on Real Networks have a growing base of potential customers as broadband penetration rates top 20% of U.S. households. Market researcher In-Stat/MDR predicts that by 2006, 7.6 million North American broadband subscribers will add more than $820 million in movie subscription and rental fees for Hollywood studios.[71]

Advances in wireless technology offer the prospect of increased versatility for video delivery mechanisms and competitive opportunities for providers of broadband content. It was recently reported that "[t]he big promise of 802.11g [wireless technology] is that it will provide enough speed to beam video reliably over a network. While 802.11b is fast enough for digital music (like MP3s) and often even for video, 802.11g offers an extra cushion in cases where

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69 Reuters, "CEO: Netflix Plans to Deliver Films Via Web in 2005," Apr. 24, 2004, Netflix Chief Executive Officer Reed Hastings.

70 FCC, "High-Speed Services for Internet Access: Status as of December 31, 2003," Wireline Competition Bureau, June 2004.

multiple computers use the network, or when other devices like cordless phones cause "interference."[72]

Movielink, LLC, a joint venture of Metro-Goldwyn-Mayer Studios, Paramount Pictures, Sony Pictures Entertainment, Universal Studios and Warner Bros. Studios charges a per movie rental starting at $2.99 and up, and no monthly subscription fee. Within two to ten minutes of downloading, viewers can begin watching titles, or store movies for up to 30-days, with unlimited viewing for any 24-hour period.[73] Movielink's "MultiPlay" feature allows customers to re-rent movies for additional 24-hour viewing periods for up to 30 days after the initial download, at a reduced price. MultiPlay pricing begins at $3.99 for an initial rental and $.99 to $1.99 for each additional viewing period, depending on the title.[74]

CinemaNow, a venture of Lions Gate Entertainment, Microsoft, and Blockbuster, offers over 1,500 films from more than 150 licensors including 20th Century Fox, Disney, MGM, Miramax, Warner Bros., and Lions Gate Entertainment. Films are available on a pay-per-view, download-to-own and subscription basis and accessed by more than one million users per month. Most current films are priced at at least $3.99, whether a customer has a subscription or not.

Starz! Encore has teamed up with RealNetworks to offer another subscription-based movie service to broadband Internet customers. For $12.95 a month, customers are entitled to unlimited downloads from a rotating selection of 100 movies. Users can download films on up to three personal computers but must watch the content within a 24-hour period. Hollywood studios supplying films to STARZ! Ticket on Real Movies include Disney, Universal, MGM,

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71 Dallas Morning News, "Internet Video-on-Demand Yet to Take Off," Doug Bedell, Jan. 8, 2004.

72 "New Zip for Networking: Latest Flavor of Wi-Fi Enhances Speed and Security," The New York Times, Jul. 15, 2004, at E8.

73 Movielink, http://ww.movielink.com

Sony, Fox, New Line, Revolution Studios and Miramax.[75] Subscribers will also have access to a streamed version of the STARZ! linear service, marking the first time a premium movie channel has been delivered simultaneously over broadband.

Comcast and Disney recently announced "Comcast's 5.7 million high-speed Internet subscribers will receive a number of ABC News features, including live streaming news and archived versions of its 'World News Tonight' and 'Nightline' programs."[76] Comcast also announced plans to "launch an online children's channel that will offer Disney features such as short videos and activities as well as discounted rates to Toontown Online, a multi-player, subscription-based computer game."[77]

These services are direct competitors for the customer's viewing time to cable's video-on-demand offerings and cable's other entertainment and information services. As cable modem download speeds increase, these services – and new offerings that are sure to arise – will provide consumers with increasingly attractive competitive alternatives. As download speeds rise from 1.5 Mbps to 3 Mbps and higher, consumers will find the inconvenience of waiting to complete a download of decreasing significance. Cable's commitment to enhancing the residential broadband subscriber's experience by increasing download speeds will benefit competitors to cable's video-on-demand service by increasing the chances that movies delivered via broadband Internet access are seen by consumers as a competitive alternative to video-on-demand delivered over cable video channels.

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74 Movielink.com, "Movielink unveils new online movie rental 'Multiplay' feature," (press release), Feb. 17, 2004

75 Starz.com, "Starz and RealNetworks Launch First Subscription Premium Movie Service for Broadband," (press release) Jun. 14, 2004

76 "Comcast Starts Disney Delivery Via Internet," The Washington Post, Jul. 21, 2004, E1.

77 *Id*.

Recent reports confirm that consumers are now able to take advantage of increased download speeds to view movies. According to one story, "Download took about half of running time. A two-hour movie, in other words, would download in about an hour, a 90-minute movie in about 45 minutes."[78] As downloads speeds increase, consumers are likely to see this service as an increasingly viable alternative to other means of obtaining video entertainment.

In another major technological development, wireless technology is being used to deliver downloaded movies to the TV screen. An evaluation reported in September 2003 that with Kiss Technology, "The 42-inch TV will be able to connect to a wireless home network and access photos, video, and music from the files on your home computer or from anywhere on the Internet: this is yet another step in the crossover between TVs and PCs, and it will radically change the way we access entertainment."[79] It will also have significant consequences for video programming competition.

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[78] "Downloading Movies Moves Closer to Reality for the Masses," http://www.kansascity.com/mld/kansascity/business/technology/9030078.htm?1c, Jun. 28, 2004. *See also,* "Movie Downloads Experience Growing Pains: Speed, Choices," USA Today.com, June 17, 2004.

[79] "Wi-Fi: TV, Meet PC. PC, TV," THEFEATURE: It's All About the Mobile Internet," Sept. 3, 2003.

III. THE CABLE INDUSTRY CONTINUES TO CHARGE AHEAD WITH NEW AND IMPROVED SERVICES TO REMAIN COMPETITIVE IN TODAY'S VIDEO MARKETPLACE

A. Cable Companies Have Invested Over $85 Billion in Infrastructure Upgrades and Facility Improvements Over the Past Eight Years

As described above, the Commission's *Tenth Annual Report* provides page after page of information on cable's evolution from a provider of one-way analog video services to a platform for a vast array of competitive video and non-video advanced services. As the Commission recognized, this transformation occurred as a result of cable companies "investing tens of billions of dollars to rebuild and upgrade cable systems" with private risk capital.[80] Since 1996, the industry's capital expenditures have reached nearly $85 billion, with $10.6 billion invested in 2003 alone.[81]

This investment equates to roughly $1,200 per customer to upgrade cable services and launch new broadband services. Rebuilding more than one million miles of cable plant, the nationwide upgrade of cable is nearly 91 percent complete as of July 2004.[82] At year end 2003, nearly 95 million cable homes were passed by systems with a capacity of 750 MHz or higher (105 million cable homes were passed by cable plant with a capacity of at least 550 MHz) and more than 95 million households were passed by activated two-way cable plant.[83]

The *Tenth Annual Report* recognized that cable operators nationwide are offering "vastly more channels of video programming," "additional enhancements such as HDTV," and "more service options, including advanced two-way services such as high-speed Internet access, cable

80 *Tenth Annual Report* at ¶ 18.

81 Kagan Research, LLC Broadband Financial Databook 2003, at 142.

82 "Show Me the Money," Morgan Stanley, July 9, 2004, at 53 ("Morgan Stanley Report").

83 Kagan Research, LLC estimates that by the end of 2004, more than 102 million households will be passed by two-way plant. Kagan Research, LLC, Broadband Cable Financial Databook.

telephony, and video-on-demand."[84] Many of these services, the Commission noted, "enable consumers to maintain more control over what, when, and how they receive information."[85]

In 2004, this trend continues unabated. Indeed, with cable households having near ubiquitous availability of advanced broadband technology, the already strong pace of cable deployment of HDTV has quickened and the deployment of interactive consumer-friendly services has taken off during the first half of 2004. Operators are now providing consumers with not only more channels of basic and digital cable services, but more control, more personalized options, and better picture and sound quality. Many communities now have interactive TV services such as video-on-demand and digital video recorders, and high-definition television, along with high-speed Internet service and local telephone service, as part of the regular mix of cable services.

The acceleration of cable's HDTV and interactive offerings, in particular, is directly attributable to fierce competition from DBS and other up and coming competitors. As described below, the desire to stay on top of the competition is driving the cable industry to get innovative, cutting-edge products into the marketplace as quickly as possible. And consumers are responding as cable's new products grow stronger each year with 22.9 million digital cable customers, 17.3 million high-speed Internet and 2.7 million cable telephone customers as of the end of the first quarter of 2004.[86]

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[84] *Tenth Annual Report* at ¶ 12.

[85] *Id*.

[86] NCTA estimates based on company data. The number of local telephone subscribers is expected to grow steadily this year and next as several cable operators are actively testing or deploying Voice over Internet Protocol (VoIP) telephone service.

B. HDTV is Now Available to Cable Customers in Over 155 Markets Nationwide

The cable industry continued to advance its commitment to the transition from analog to digital television during the first half of 2004 by promoting the nationwide deployment of HDTV over cable. When cable companies initiated HDTV service in early 2003, it was available to approximately 37 million cable households. By the end of the first quarter of 2004, that figure more than doubled with 84 million American households able to receive high quality HDTV programming from their local cable operator. In other words, the availability of high definition services to cable subscribers jumped 125 percent from January 2003 through March 2004. HDTV is now available from at least one cable system in 99 of the top 100 markets. This is the fastest rollout of any service launched by the cable industry.

In addition to the top 100 markets, cable companies are marketing HDTV services to customers in smaller communities across the country as well. Packages of HDTV channels are now available to customers in 56 markets beyond the top 100, bringing the total number of markets where cable systems are providing HDTV to 155 nationwide.

The typical HD package over cable includes a wide mix of broadcast, basic cable and premium cable networks featuring high definition content. Here in Washington, for example, Comcast provides 14 channels of HDTV programming, including five broadcast stations. Time Warner Cable has entered into carriage agreements with all of the major commercial broadcast networks for the HD programming carried by the stations they own, and the company plans by year-end to offer an average of 15 HD channels each.

Cox Communications entered into an agreement with the Public Broadcasting Service (PBS) and the Association of Public Television Stations (APTS) to carry the digital signals, including high definition programming, of 70 PBS stations on its systems. Public broadcasters have similar company-wide deals with Time Warner Cable and Insight Communications, as well as geographic market-specific carriage agreements with Comcast, Adelphia, Cablevision, Bright House and other cable operators. Overall, cable systems are currently carrying nearly 400 broadcast stations offering HDTV or other compelling digital content – a more than four-fold increase just since January 2003, when 92 local broadcast stations' HD programming was being carried.

The rapid rollout of high definition services over cable has been accompanied by the development of new and compelling HDTV content by cable program networks. Today, 15 different cable networks are providing the clarity and sound of HDTV in popular genres, such as movies and sports, and original and general interest programming. Pay TV pioneers HBO and Showtime have been joined by other premium channels, such as Cinemax HDTV, The Movie Channel HD, Starz HD! and INHD, in offering first-run and recent movies and other HD programming, commercial-free 24-hours a day.

Discovery launched its 24-hour-a-day HD Theater two years ago. It has announced plans to spend $65 million over the next five years on Atlas HD, a series of 30 two-hour, high definition documentary specials on countries around the world.[87] Bravo HD+ now offers symphonic concerts, ballet, theater, and opera in high definition. TNT-HD, which recently launched, features original dramatic series, sporting events and other HD programming.

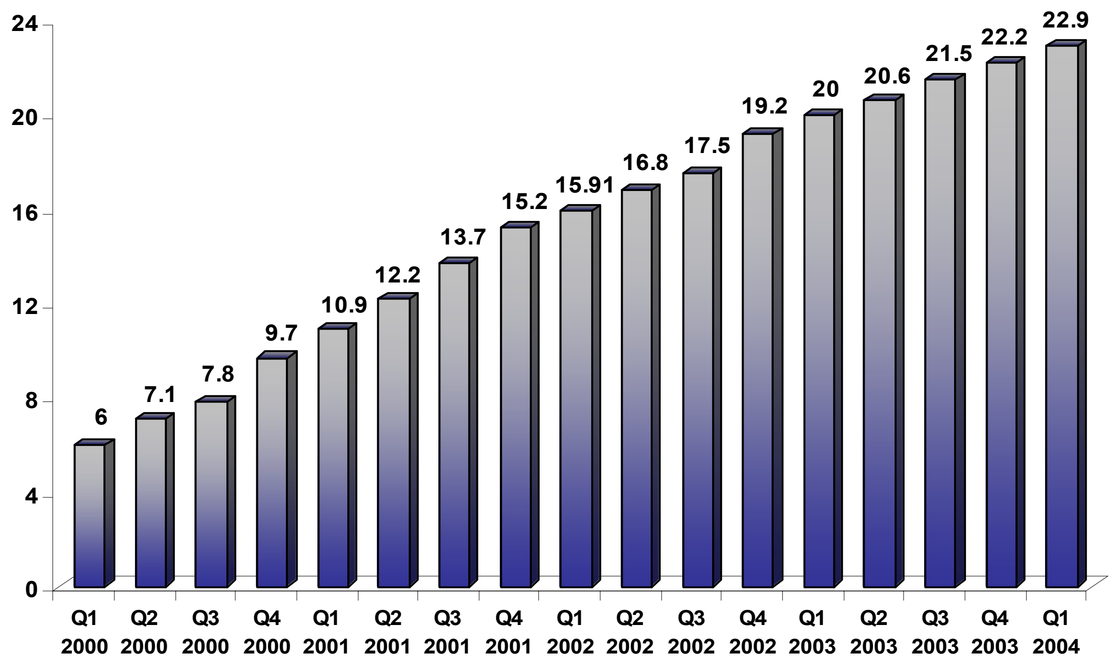
HDNet produces and televises sports, news and entertainment programming in high definition 24 hours a day. Regional sports networks, MSG Network, Comcast SportsNet and Fox Sports Net NY, are also major providers of HD programming. In June 2004, ESPN launched the ESPN Digital Center, a state-of-the-art facility that telecasts the network's sports news and information program, SportsCenter, and over 3000 hours of originally produced high definition studio programming a year.

C. Digital and Interactive Cable Continues to Grow and Evolve to Meet the Competition From Other Video Providers

As HDTV is gaining momentum, digital cable services have become an integral part of the cable viewing experience for an increasing number of consumers. Digital cable started out largely as a place for traditional program networks to go to gain carriage in the face of a full-to-capacity analog expanded basic video programming tier. But it has evolved into an array of sophisticated program and content offerings, including digital tiers that allow customers to pick and choose packages of networks by genre, such as sports, music, movies, family, variety, special interest, and foreign-language programming. Cable companies also offer a variety of multiplexed premium digital tiers, featuring programming from HBO, Showtime, Starz! and international services. Today, more than 30 percent of U.S. cable customers – approximately 22.9 million – subscribe to digital cable services.

[87] "Picking Up Steam More Operators, Programmers Are Beginning to Jump on HD Bandwagon," Multichannel News, Sept. 22, 2003.

Exhibit 5
Digital Cable Customers
(in millions)



Source: NCTA estimates based on company data.

Now digital cable is making the next big leap in program content: the wide-scale deployment of interactive digital services. Last year, NCTA described cable companies as "exploring and refining" interactive digital services, such as digital video recorders and video-on-demand,[88] but this year these services are front and center in cable's battle with DBS for multi-channel video customers.

[88] DVRs record video programming onto a hard drive located in the set-top box and allow the viewer to pause, fast forward and manage other functions and applications, including the ability to pause live television. Video on demand allows customers to order video programming from a central server at any time of day, and to fast-forward, rewind, and pause the programming. Some cable operators also offer subscription VOD, in which the customer pays a monthly fee for unlimited access to a library of pre-selected programming.

As one observer put it, "DVRs are now at the center of the ongoing war between cable and satellite TV operators"[89] and another views it as a "magic bullet used by cable companies to attract and hold onto subscribers."[90]

The future looks bright for DVRs according to many analysts. One describes it as a "great product," that once people try it, "becomes a very important way they interact with television."[91] Forrester Research expects 3.4 million homes to have DVRs from satellite operators by the end of this year and 1.4 million to have them from cable companies.[92] By 2006, Forrester predicts that satellite DVRs will hit 7 million, cable DVRs 6 million and the remainder 4.2 million. And by 2007, cable should take the lead with 10 million cable DVR homes, compared with 9 million satellite DVR homes.[93] With cable integrating DVR technology into set top boxes, another industry analyst, the Yankee Group, predicts that DVRs will reach 24.7 million cable homes by year-end 2007.[94]

The major cable system operators are either deploying DVRs or have announced plans to do so in the near future. Time Warner Cable, for example, has rolled out DVRs in 30 of its top 31 divisions. As of the first quarter of 2004, it had 458,000 DVR customers. Cox Communications has offered DVRs to 35 percent of its households and plans to have the service available in 75 percent of its households by the end of 2004. Areas where Cox has launched

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89 "Snap and zap Easy-to-Use digital video recorders threaten to make VCRs – and commercials – obsolete," Newsday, Jun. 27, 2004, at E06.

90 *Id.*

91 Yankee Group; "Changing the way you view TV, Digital video recorder offers more options than a VCR, including the ability to pause and resume live programs," The Florida Times-Union, Jun. 30, 2004, at FI, (quoting Mike Paxton, senior analyst with In-Stat/MDR, a technology research firm).

92 "Snap and zap Easy-to-Use digital video recorders threaten to make VCRs – and commercials – obsolete," Newsday, Jun. 27, 2004, at E06.

93 *Id.*

94 "Digital Video Recorders will Reach 24.7 million Homes by Year-End 2007," Yankee Group Press Release, Oct. 31, 2003.

DVR service include Gainesville, Florida; Fairfax, Virginia; San Diego, California; Las Vegas, Nevada; and Cleveland, Ohio.

Comcast plans to offer DVRs to all of its customers by year-end 2004. It has launched the service in such areas as Albuquerque, New Mexico; northern Virginia; Montgomery County, Maryland; selected systems in New Jersey; Charleston, South Carolina; and Panama City, Sarasota and Fort Myers/Naples, Florida. Insight has launched DVR service in all of its systems. Charter, Cablevision, Mediacom, Bright House, Adelphia and other operators have announced plans for DVR deployment in the coming year.

In addition to DVRs and VOD discussed *supra*, a variety of other interactive services are being launched. Cablevision recently added new interactive features to its cable service, including on-demand weather, news and sports headlines and traffic information that is similar to what is available on the websites in Cablevision's interactive Optimum digital service. Customers access the features using an interactive on-screen menu through their digital set-top box.[95]

Comcast and Microsoft Corporation are to deploy new software developed by Microsoft for on-demand services, such as movies on demand and interactive games.[96] The software, called Foundation Edition, will work with existing set top boxes but gives operators the capability to add improved graphics, and other features to existing program guides.

RealNetworks' Rhapsody jukebox subscription service is distributed to consumers through Cablevision's Optimum Online, Charter Communications, Comcast, and Time Warner Cable's Road Runner division. Rhapsody provides consumers with unlimited access to more

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[95] "Cablevision Delivers Advanced Interactive Services to All Digital Cable Customers," Cablevision press release, May 20, 2004; "City Inc." Newsday, May 21, 2004 at Business and Technology section, A59.

[96] "Comcast will Use Microsoft System for Digital TV", The Wall Street Journal, May 21, 2004, at A3.

than 30,000 albums of music from all five major music companies and more than 200 of the world's most prominent independent labels.

Time Warner and the cable network, GSN, formerly named the Game Show Network, launched a service in Hawaii that features a variety of interactive games. Cablevision rolled out an interactive gaming option to its digital customers in May.[97] Comcast is experimenting with interactive games and plans to offer a subscription gaming package in the near future.

As interactive TV gains more traction in the U.S., some have observed that this trend is cable's response to Rupert Murdoch's acquisition of a controlling stake in DirecTV, the largest satellite service: "Mr. Murdoch's similar service in the United Kingdom, BSkyB, makes heavy use of interactive features, including those that allow subscribers to bet on horse racing, soccer, golf and a wide range of other sports and casino games. . . . Mr. Murdoch has made it clear that he plans to export many of BSkyB's interactive features to DirecTV."[98]

D. Cable's High-Speed Data Services Differentiate Cable

Faced with increasing competition in the distribution of video services, cable companies have focused on providing superior high-speed Internet services as a way to differentiate their product. The industry's presence in the Internet services marketplace significantly changed residential Internet when it brought broadband services into the home in the late 1990's. After cable companies undertook the investment risks associated with the provision of broadband Internet access and demonstrated its commercial viability, others followed. Since the introduction of these services, there has been significant growth in availability, consumer acceptance and subscribership. The cable industry successfully developed standards to make

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[97] "Video Games Come to Cable TV", New York Daily News, May 3, 2004, at 74.

[98] "Place Your Bets: If You Like to Gamble, but You Just Hate to Get Off the Couch, Pay-TV Operators Have Just the Thing for You," The Wall Street Journal, Technology- A Special Report, May 24, 2004, at R13.

interoperable, non-proprietary cable modems available at retail. The *Tenth Annual Report* confirms this success, noting that approximately 70% of video subscribers taking high-speed Internet access services purchase their own cable modems.[99]

Cable is an ideal medium through which to offer consumers high-speed access to the Internet. Cable's superior bandwidth enables transmission speeds significantly faster than its competitors, the cable connection is "always on" and it does not interfere with normal telephone activity or usage. Cable companies offer high-speed Internet download speeds that are on average more than twice as fast as DSL providers. The recent study by comScore Networks, a measurement firm, calculated that the average throughput speed for Cable is 2,178 kbps compared to 861 kbps for DSL.[100]

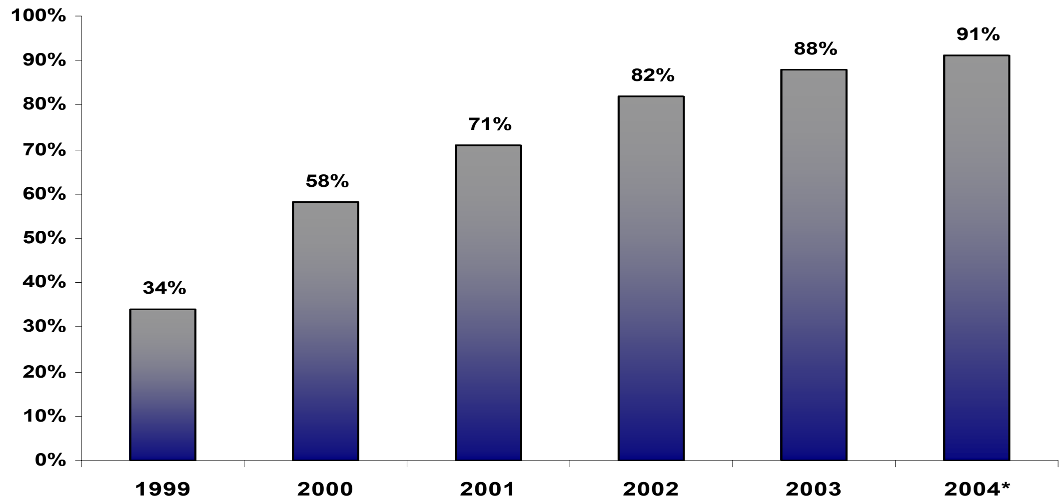
Cable companies continue to invest in improving these services and constructing new facilities to increase the availability of these services. According to Morgan Stanley, broadband Internet access services are available to more than 98.268 million homes (see Exhibit 6). This marks an increase of nearly seven million homes over the past year.[101]

Exhibit 6
Cable Broadband Availability as a Percentage of Homes Passed by Cable: 1999-2004

99 *Tenth Annual Report* at ¶ 178.

100 comScore Networks Press Release, Apr. 28, 2004.

101 Morgan Stanley Report at 53.



Source: Cable Broadband Homes Passed - Morgan Stanley, "Show Me the Money," July 9, 2004. Cable Homes Passed - Morgan Stanley. * - denotes estimate.

Morgan Stanley estimates that cable's broadband services will pass over 102.5 million homes by year end 2005.[102] These numbers signify that the cable industry is not far from substantially completing the system upgrades necessary to offer advanced services to each system's entire footprint.

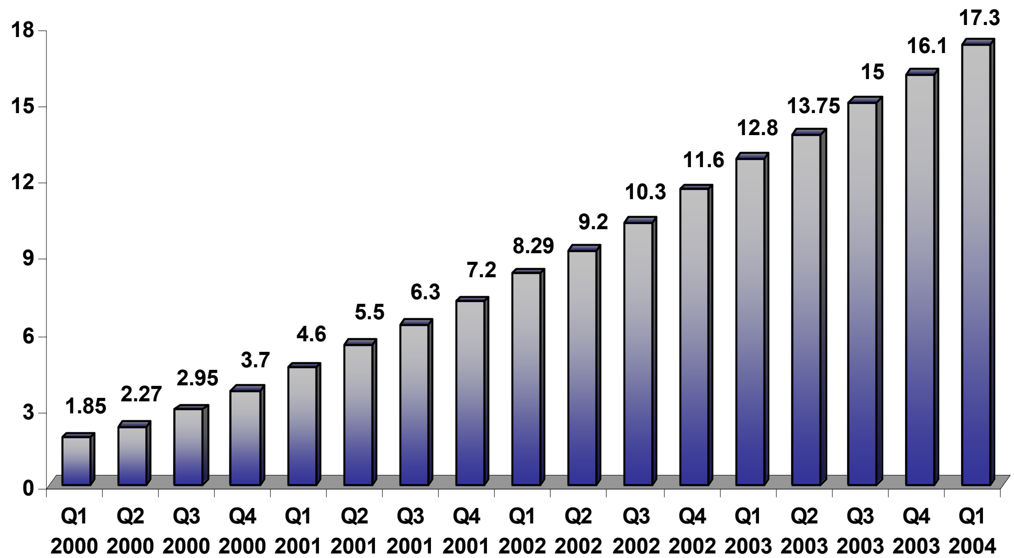
The Commission's most recent report on High-Speed services illustrates that cable modem acceptance is on the rise. For the full year ending December 31, 2003, high-speed cable modem connections grew 45 percent, from 11.4 million to 16.4 million lines.[103] Independent studies further verify this trend. The LRG reported record cable modem growth during the first quarter of 2004 with the top 20 cable companies adding 1.17 million cable modem subscribers. This marked the sixth quarter out of the last seven that cable achieved over one million net

[102] *Id*. at 54.

[103] FCC, High-Speed Services for Internet Access: Status as of December 31, 2003, Jun. 2004, at Table 1.

adds.[104] NCTA confirms this growth estimating that cable modem customers reached 17.3 million by March 2004.

Exhibit 7
Cable Modem Customers
(in millions)



Source: NCTA estimates based on company data.

Cable companies compete for subscribers with DSL and narrowband dial-up, which holds a significant share of the market. This competition is more intense than ever. DSL and cable companies are competing on price, speed, customer service, portal design, content and all other aspects of the components that comprise the subscriber's Internet experience.

Cable companies have been increasing download speeds as a means of making broadband service more competitively attractive. According to one report last Fall, which contended that telcos cut prices in response to cable's offering of increased download speeds, "Cox Communications bumped its download speeds to 3 MBps awhile ago. Time Warner Cable, Adelphia Communications and Comcast are doubling their speeds right now. Charter

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[104] Leichtman Research Group Press Release, "A Record 2.3 Million Add Broadband in First Quarter of 2004,"

Communications recently increased its download speeds to 2 Mbps. Cablevision has been offering speeds that average 3.5 Mbps for some time.[105] The dynamism of cable's modem service, and the ever-increasing data rates offered, is evidenced by Mediacom's recent announcement of plans "to launch a 5 Mbps download/128 kbps HSD service that would include wireless home networking and premium Internet content."[106]

Bruce Leichtman, president of LRG reports that over "the past few quarters DSL providers have increased their focus on broadband with an emphasis on lower pricing."[107] In addition, DSL providers are responding to cable's superior services by promoting special deals, bundling services, and improving connection speeds. For example, Verizon recently announced that many of its DSL subscribers can request a free service upgrade that will triple their upstream net access from 128 kilobits to 384 kilobits. In addition, Verizon announced plans to offer downstream connections at up to 3 Mbps, matching cable modem speeds. The price of these services is not yet determined.[108] Smaller companies, such as Frontier in Rochester, New York, have already achieved this level of service. SBC Communications also announced a similar offer that would double the speeds for its DSL service to customers willing to pay a premium.[109] DSL providers' focus on these services has led to steady DSL subscriber growth. The

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May 11, 2004.

105 "Who'll Go the Distance?," CableFax's CableWorld, Oct. 6, 2003, at 5. *See also,* "Several More MSOs Scramble to Boost Broadband Speeds," Cable Datacom News, Nov. 1, 2003**;** "Road Runner Goes to 3 Mbps," Multichannel News, Sept. 29, 2003.

106 "Need for Speed: Mediacom Readying 5 Mbps Tier With Bonus Features," CableFAX Daily, Jul. 14, 2004, at 1; *see also,* "The Little Cabler That Could," Apr. 19, 2004.

107 Leichtman Research Group Press Release, "A Record 2.3 Million Add Broadband in First Quarter of 2004," May 11, 2004.

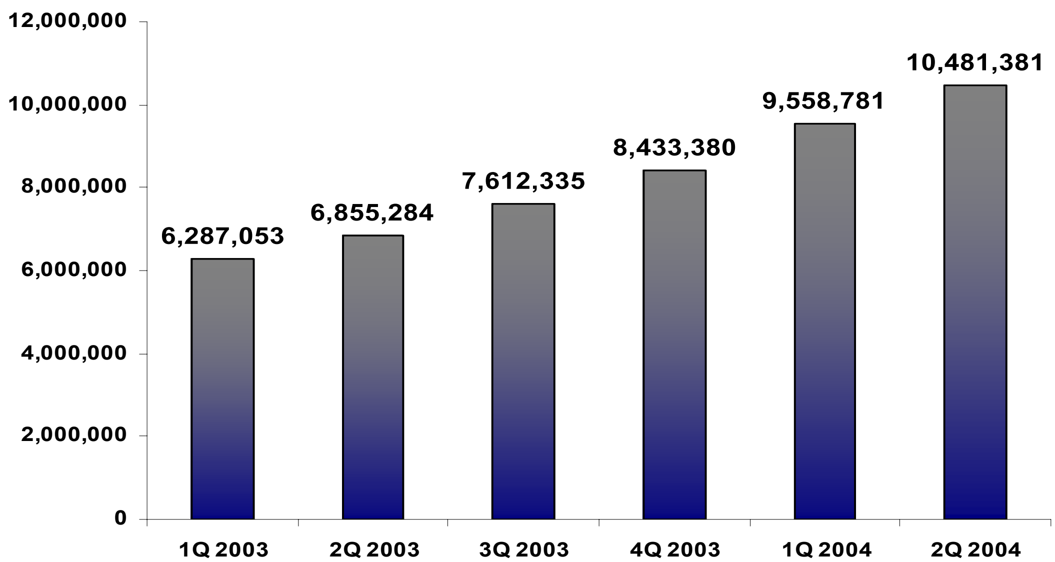
108 A Broadband Broadside, The Boston Globe, May 5, 2004, at C1.

109 "Internet DSL speed double for those who pay higher rate" Tribune Staff, Chicago Tribune at THR2. Apr. 02, 2004.

Commission reported that at year-end 2003, DSL lines increased 47 percent from 6.5 million to 9.5 million subscribers since year-end 2002.[110]

The Morgan Stanley report verifies this growth trend. It estimates that as of June 30, 2004 there were 10.48 million total DSL subscribers (see Exhibit 8).[111] LRG further substantiates this trend reporting that broadband had become more competitive during 2003 and predicting that it will intensify as the number of subscribers doubles over the next four years.[112]

Exhibit 8
DSL Subscriber Growth



Source: "Show Me the Money," Morgan Stanley, July 9, 2003, at 51.

Despite gains made by DSL and cable, dial-up services continue to be a significant option for residential consumers. Morgan Stanley estimates that there were 42.31 million dial-up subscribers at the end of the second quarter of 2004. This accounts for a 60 percent residential share of total Internet subscriptions. However, despite dial-up's share, there has been

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110 FCC, High-Speed Services for Internet Access: Status as of December 31, 2003, June 2004, at Table 1.

111 Morgan Stanley Report at 51.

112 "DBS Continues to Lead Cable in Customer Satisfaction – but Likelihood to Switch is Similar," Leichtman Research Group Research Notes, 1 Q 2004 at 3.

a steady decline in dial-up subscriptions over the past year. Since June 2003, over 4 million subscribers dropped dial-up service.[113] In addition, an LRG study found that 30 percent of narrowband subscribers are interested in getting broadband.[114] These estimates strongly suggest that consumers continue to see a greater value in broadband service offerings. Despite the higher price, consumers are willing to switch and are switching to broadband services.

In addition to DSL and dial-up services, and terrestrial wireless and satellite-delivered offerings, Broadband over Power Line ("BPL") systems is a growing potential source of competition. The Commission asserts that BPL "may provide an effective means for "last-mile" delivery of broadband services and may offer a competitive alternative to digital subscriber line (DSL), cable modem and other high-speed Internet technologies."[115] An independent analysis by Precursor Advisors confirms this growth potential.[116]

Steps made by DBS providers to offer broadband services as part of their packages further illustrates the significance of broadband as an outgrowth of the competitive environment for video distribution. EchoStar and DirecTV both entered into agreements with RBOCs to offer DSL as part of their bundling strategy. Cable companies offer bundling options to compete with these deals.

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[113] Morgan Stanley Report at 51.

[114] "DBS Continues to Lead Cable in Customer Satisfaction – but Likelihood to Switch is Similar," Leichtman Research Group Research Notes, 1 Q 2004 at 3.

[115] Notice of Proposed Rulemaking, Carrier Current Systems, including Broadband over Power line Systems, Amendment of Par 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems, ET Docket 03-104, 04-37, FCC 04-29, at ¶ 3.

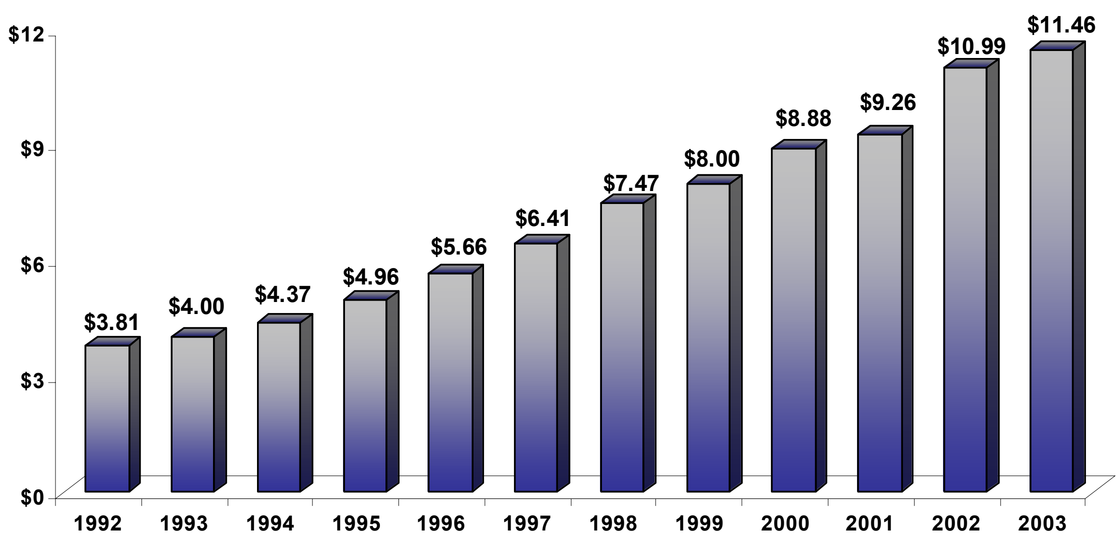
[116] "Migration to Broadband Is Big Trouble for Telcos," Precursor Advisors, Jun. 3, 2004.

IV. THE CABLE INDUSTRY'S INVESTMENT IN PROGRAMMING IS INDICATIVE OF A HIGHLY COMPETITIVE VIDEO MARKETPLACE

As cable's deployment of new cutting-edge services develops, cable operators and cable program networks have poured more and more money into improving and differentiating cable's core video product. Each year, the hallmark of cable television – the abundance of original, compelling, and high-quality program networks – delivers better and richer content.[117]

Operators continue to make substantial investments in programming. In 2002, programming expenditures reached $10.99 billion and in 2003, it increased to $11.46 billion.

Exhibit 9
Cable System's Programming Expenditures
(in billions)



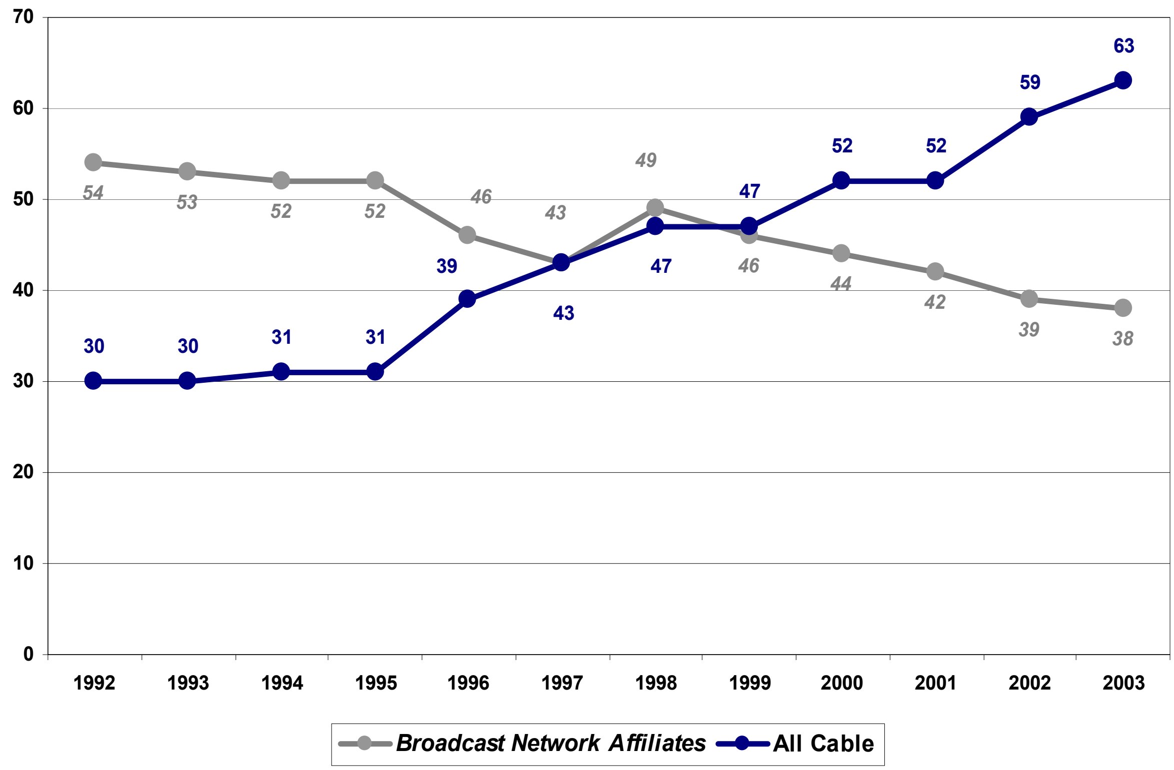
Source: NCTA estimates based on data from Kagan Research, LLC and the U.S. Copyright office.
Note: Programming expenditures include license fees, copyright fees and investments in local programming.

[117] The NOI asks a series of questions regarding the packaging and pricing of cable program services, including the availability of program networks on an a la carte or mini-tier basis. We refer the Commission to NCTA's extensive comments recently filed in the FCC's a la carte proceeding. *See* Comments of NCTA, In the Matter of A La Carte and Themed Programming and Pricing Options for Programming Distribution on Cable Television and Direct Broadcast Satellite Systems, MB Docket No. 04-207, July 15, 2004.

Investment in cable program content has also meant that new cable program networks continue to be created. The number of national cable networks has grown from 145 in 1996 to 339 by year-end 2003 – a 133 percent increase over six years. Recent network launches include NFL Network, Pentagon Channel, Sí TV, and TVOne.

The number of people watching cable programming continues to grow, as the combined viewership of the seven national commercial broadcast networks (ABC, CBS, NBC, FOX, UPN, WB & PAX) continues to decline (see Exhibit 10).

Exhibit 10
Viewing Shares Shift to Cable
(total day shares)



Source: Cabletelevision Advertising Bureau's Analysis of Nielsen data.

During the 2003-2004 television season (September – May), more than half of all primetime television viewers watched advertiser-supported cable networks – the first time that cable has topped all national broadcast networks combined during this programming period. In addition, MVPD households tuned in on a weekly basis to more than 35 hours of ad-supported cable programming versus an average of 24 hours per week for all commercial broadcast programming combined.

Cable networks continue on pace to exceed last season's viewing levels and further surpass broadcast television. An analysis of Nielsen data by the Cabletelevision Advertising Bureau (CAB) shows that for the official 2003/2004 TV season, ad-supported cable networks surpassed the "Big 4" (ABC, CBS, NBC, FOX) broadcast networks on a total day basis by 13.8 share points – with cable posting a 51.7 share to broadcast's 37.9.

As measured against all seven broadcast networks in primetime during the 2003/2004 TV season, cable outpaced the broadcasters collectively by 2.7 share points with a 49.9 share – a first for cable. The year before, the broadcast networks had a .3 share point edge as cable continued to whittle away at broadcast viewership.[118] And, in the specific area of children's programming, cable networks continue to attract a growing audience share. Total day viewing by kids (ages 2-11) of advertising-supported cable networks increased from a 28.3 share in 1993/1994 to a 53.6 share during the 2003/04 official TV season.[119]

In addition to investing in national cable program networks, cable companies continue to be active in promoting local and regional programming ventures that provide coverage of state and local events. In May 2004, The Radio and Television News Directors Foundation (RTNDF)

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[118] All viewership data provided by Cabletelevision Advertising Bureau (CAB), based on analysis of Nielsen data.

[119] CAB analysis of Nielsen data.

issued a report entitled, "Cable News: A Look at the Regional News Channels and State Public Affairs Networks," which offers a compelling analysis of the breadth of local, state and regional news and public affairs channels now serving cable customers around the nation.[120] Cable news and public affairs networks continue to grow, with a total of 25 state public affairs networks and more than 30 regional cable news networks.

The report notes that "as the public has moved away from the broadcast model of appointment television viewing, the news channels have been available to satisfy the public's interest in news at any time."[121] Since their inception, cable's local and regional news channels "have been the places viewers turn to during the campaign season, on election night and in the months in between when they want frequent, in-depth political coverage."[122]

The report contains a comprehensive directory of the local and regional news channels and the state public affairs news channels. The following services are available on cable today:

- Time Warner Cable regional services provide 24-hour local news coverage. For more than a decade, New York 1 News has provided 24-hour news coverage of New York City's five boroughs. Other operations include R News in Rochester, New York; News 8 in Austin, Texas; News 14 Carolina in Raleigh, North Carolina; News 14 Carolina in Charlotte, North Carolina; Capital News 9 in Albany, New York; and News 10 Now in Syracuse, New York.

- New England Cable News reaches about 2.8 million homes throughout six New England states, offering a mix of news, political coverage and documentaries.

- The California Channel, an independent, non-profit public affairs cable network, offering gavel-to gavel proceedings of the California Legislature, and other forums where public policy is discussed – all without editing, commentary or analysis.

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120 "A Look at Regional News Channels and State Public Affairs Networks", Radio and Television News Directors Foundation, 2004 ("RTNDF Report").

121 *Id*. at 2.

122 *Id.* at 4.

- Michigan Government Television, which produces unedited coverage of Michigan's state government. MGTV offers live (as well as tape-delayed) gavel-to-gavel coverage of the House and Senate sessions and oral arguments before the Michigan's Supreme Court. MGTV also covers executive branch boards, including the State Board of Education, House and Senate committees, live phone-in shows, and many government-related events.

- The Pennsylvania Cable Network (PCN), which provides unedited live and same-day coverage of the Pennsylvania Senate and House floor proceedings. The network also televises committee hearings, press conferences, speeches and other public forums and events where the business of the state is debated, discussed and decided.

- Rainbow Media provides local content to subscribers in New York, Connecticut and New Jersey with the News 12 Networks and MetroChannels. The News 12 regional news channels include News 12 Bronx, News 12 Connecticut, News 12 Long Island, News 12 New Jersey, News 12 Westchester, and News 12 Interactive. MetroChannels provide a suite of three networks with a wide range of "hyper-local" information geared toward the tri-state region, including a 24-hour entertainment and lifestyle guide.

- Comcast distributes its regional news, sports and entertainment channel CN8 to households in Delaware, Maryland, New Jersey, New England and Pennsylvania.

V. THE CABLE INDUSTRY CURRENTLY SUBMITS EXTENSIVE, SYSTEM-SPECIFIC INFORMATION TO THE COMMISSION

The cable industry fully appreciates the Commission's need for "a broad range of information pertaining to video distribution technologies and the programming available to consumers."[123] The Commission already collects a significant amount of information from cable companies in regularly provided reports and through periodic agency requests, and other information is available from public sources.

Form 325-Annual Report of Cable Television Systems – Cable systems with 20,000 subscribers or more, and a sample of smaller systems, submit to the Commission on Form 325,

[123] *Notice*, ¶ 7. *See* Statement of Commissioner Michael J. Copps, Jun. 17, 2004, Statement of Commissioner Jonathan S. Adelstein, Jun. 17, 2004.

the "Annual Report of Cable Television Systems." These reports contain a substantial amount of company-specific data relevant to this proceeding. This information is identified for each reporting cable system by headend. Form 325 collects subscriber information, equipment information, plant information, signal distribution information and information concerning the cable system's channel line-up.

The required subscriber information includes the total number of basic subscribers, and the total number of potential subscribers with access to the existing cable plant (*i.e.*, homes passed). This section of Form 325 also calls for the number of cable modem subscribers and the number of telephony subscribers served by the system. Cable systems are also required to report on customer equipment. Equipment reporting requirements include the number of leased cable modems, and the total number of leased set-top boxes deployed in the system. Filers must also submit a breakdown of leased set-top boxes separated into the number of analog, digital and hybrid boxes (*i.e.*, set-top boxes designed to receive both analog and digital set-top boxes) leased.

Cable systems also submit extensive plant information on Form 325, including the average number of subscribers per node, whether a system is included in a cluster, the number of systems in the cluster and the number of subscribers served by the cluster. Cable systems must also provide the amount of available and activated upstream and downstream RF spectrum. Systems must also submit the number of analog and digital channels actually carried by the system, and the number of analog and digital channels that the particular system is capable of carrying. Data is also required on the number of video channels carried within a 6 MHz bandwidth as determined by the equipment modulating these signals onto the system.

Finally, Form 325 requires a filer to identify every channel carried on the cable system, and to provide the type of programming offered on each channel (*e.g.*, broadcast must carry, broadcast retransmission consent, PEG access, cable network). Cable systems also identify the tier upon which each channel is carried, including basic, expanded basic, premium, pay per view and other. Cable systems must also state whether programming is transmitted over the system in analog, digital or high definition format.

Form 477 – Local Competition and Broadband Reporting – The Commission requires cable systems and other companies that provide 250 or more full broadband (200 kbps in both directions) and one-way broadband (200 kbps in one direction) lines to end-users within a state to report the number of lines in operation semi-annually on Form 477. Local telephone competition data must be reported also. The Commission uses this information and other data reported on Form 477 to issue semi-annual reports on the state of broadband deployment and penetration.[124] Form 477 requires all but the smallest operators of broadband services to provide this information.

Annual Cable Rate Survey – The Commission annually publishes "statistical reports on the average prices for basic cable service and other cable programming, and for converter boxes, remote control units, and other equipment."[125] The Commission bases these reports on survey information collected from cable systems. The report compares cable rates for systems found subject to "effective competition" and rates for cable systems that have not been found subject to effective competition.[126]

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[124] *See, e.g.,* "High-Speed Services for Internet Access: Status as of December 31, 2003," Industry Analysis and Technology Division, Wireline Competition Bureau, June 2004.

[125] 47 U.S.C. § 543 (k).

[126] *See, e.g.,* Report on Cable Industry Prices, FCC 03-136, rel. Jul. 8, 2003.

Special Data Collections – The Commission has also undertaken special surveys of cable systems to collect information from time to time. For example, in mid-2001, the staff conducted a survey on "Cable System Capacity and Retransmission Consent Agreements" in association with CS Docket No. 98-120, relating to Digital Broadcast Signal Carriage.[127] The Commission gathered detailed information from cable companies on their plans to upgrade system capacity, and the status of negotiations with television broadcast stations for retransmission consent with respect to digital signals.

Subsequently, in mid-2003, the Media Bureau, at the direction of Chairman Powell, sent letters to major cable MSOs, seeking company-specific information on the digital transition. The Media Bureau sought information on systems with 25,000 or more subscribers regarding digital broadcast or other high-definition digital programming offered at no cost, which HDTV or other "value added" digital programming are actually being carried on each identified system, current and planned high-definition programming on affiliated cable systems, the status of procurement of integrated high definition digital set-top boxes that include digital connectors, and current and planned efforts to advertise and market HDTV and any other value added DTV programming.[128]

* * *

The cable industry believes that already established data collection processes and special information requests, where necessary, enable the Commission to effectively assess the status of multichannel video competition. By relying upon these processes, in conjunction with

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[127] "Carriage of Digital Must Carry Proceeding: Channel Capacity Survey responses Placed in Docket," FCC 01-22, rel. Jun. 20, 2001.

[128] *See, e.g.,* Letter of W. Kenneth Ferree, Chief, Media Bureau, to Rocco Commisso, Chairman and CEO, Mediacom, May 21, 2003.

information available from public sources, the Commission is able to effectively evaluate cable's role in an increasingly vibrant multichannel video marketplace.

CONCLUSION

The marketplace for delivery of video programming has changed profoundly in the last decade. Multichannel video programming delivery is now "characterized by vigorous rivalry among multiple distributors," in the words of the *Second Report*. Consumers can, and do, switch among comparable sources of video programming. The goal of a competitive video market has been achieved.

Respectfully submitted,

/s/ Daniel L. Brenner

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